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5 **UNITED STATES DISTRICT COURT**

6 **DISTRICT OF NEVADA**

7 MARCUS SHARIF MCNEAL,

Case No.: 2:19-cv-00151-RFB-GWF

8 Petitioner,

ORDER

9 v.

10 JERRY HOWELL, et al.,

11 Respondents.
12

13 Petitioner Marcus Sharif McNeal has submitted another petition for a writ of
14 habeas corpus (ECF No. 1-1). He has not submitted an application to proceed in forma
15 pauperis or paid the filing fee. Thus, this action has not been properly commenced. 28
16 U.S.C. § 1915(a)(2) and Local Rule LSR1-2.

17 Moreover, McNeal has already filed at least two habeas petitions that challenge
18 the same judgment of conviction—C-288873-1—in this court. (See case nos. 2:16-cv-
19 01618-JAD-GWF; 2:17-cv-2589-RFB-CWH).

20 28 U.S.C. § 2244(3)(A) provides: “[b]efore a second or successive application
21 permitted by this section is filed in the district court, the applicant shall move in the
22 appropriate court of appeals for an order authorizing the district court to consider the
23 application.” Where a petition has been dismissed with prejudice as untimely or

1 because of procedural default, the dismissal constitutes a disposition on the merits and
2 renders a subsequent petition second or successive for purposes of 28 U.S.C. § 2244.
3 *McNabb v. Yates*, 576 F.3d 1028, 1029-1030 (9th Cir. 2009); *Henderson v. Lampert*,
4 396 F.3d 1049, 1053 (9th Cir. 2005).

5 In fact, McNeal's earlier-filed 2016 petition is currently pending before this court
6 (2:16-cv-01618-JAD-GWF). This petition, therefore, is duplicative and/or a second or
7 successive habeas corpus petition. *Henderson v. Lampert*, 396 F.3d 1049, 1053 (9th
8 Cir. 2005). Accordingly, this petition shall be dismissed as improperly commenced and
9 second and successive.

10 Reasonable jurists would not find this conclusion to be debatable or wrong, and
11 the court will not issue a certificate of appealability.

12 **IT IS THEREFORE ORDERED** that the Clerk shall **DETACH** and **FILE** the
13 petition (ECF No. 1-1).

14 **IT IS FURTHER ORDERED** that the petition is **DISMISSED** as improperly
15 commenced and a successive petition.

16 **IT IS FURTHER ORDERED** that a certificate of appealability is **DENIED**.

17 **IT IS FURTHER ORDERED** that petitioner's motion for appointment of counsel
18 (ECF No. 2) and motion for evidentiary hearing (ECF no. 3) are both **DENIED** as moot.

19 **IT IS FURTHER ORDERED** that the Clerk shall **ENTER JUDGMENT** accordingly
20 and close this case.

21 DATED: February 26, 2019.



22 RICHARD F. BOULWARE, II
23 UNITED STATES DISTRICT JUDGE